

REMARKS

Claims 3-27, 32-51, 54-66 and 71-82 are pending.¹ Claims 3, 18, 32-34, 54 and 73 have been amended. Favorable reconsideration is requested.

Claims 3, 18, 34, 54 and 73 were rejected under 35 U.S.C. § 112, first and second paragraphs. The amendments to those claims is believed to obviate the rejections and their withdrawal is respectfully requested. The amendments are supported by the specification at least at page 37, lines 11-24 and Figures 9A and 9B.

Claims 32-34 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement, apparently because they were considered to be “single means claims.” Without conceding the propriety of the rejection, those claims have been amended to recite additional structure of the base station. As amended, claims 32-34 cannot be said to constitute single means claims. Withdrawal of the rejection is requested.

Claims 3, 18, 34, 54 and 73 were rejected under 35 U.S.C. § 103 over Miller. Claims 4, 7, 10, 13, 16, 17, 32, 33, 55, 58, 61, 64, 71 and 72 were rejected under 35 U.S.C. § 103 over the admitted prior art in view of U.S. Patent 6,330,429 (He). Claims 19, 35 and 74 were rejected under 35 U.S.C. § 103 over Miller in view of He. Applicants submit that the amended independent claims under consideration are patentable for at least the following reasons.

Independent Claims 3, 18, 34, 54 and 73

Claim 3 is directed to a mobile communication system for forming a high speed data transfer path for a mobile station and performing resource management on the high speed data transfer path. The mobile communication system includes: means which measures a time rate at which data is sent on the data transfer path; and means which performs the resource management on the basis of a result of the measurement.

¹ Claims 5, 6, 9, 11, 12, 20-27, 36-51, 56, 57, 60, 62, 63 and 75-82 have been withdrawn from consideration.

As amended, claim 3 recites that resource management is performed on the basis of the time rate at which data was sent on the data transfer path. Applicants find no teaching or suggestion of this feature in Miller. For at least this reason, amended independent claim 3 is believed clearly patentable over Miller. Amended independent claims 18, 34, 54 and 73 are believed patentable for substantially similar reasons.

Independent Claims 17, 33 and 72

Claim 17 is directed to a mobile communication system, which includes: a base station; a mobile station for which a shared channel shared with other mobile stations is set in order to perform data transmission with the base station; and a radio network controller which notifies the base station of at least allocated power which is a maximum value of power of the shared channel. Means is included in the base station, which calculates an average amount of use of the power in a data transmission time on the shared channel.

Claim 17 further recites that the measuring the transmission power of the data transmission is done in a data transmission time. This feature is not described in the admitted prior art. That is, in the known 3GPP standard the measurement is performed in a prescribed measurement period, separate from the period of data transmission. This was recognized in the Office Action, e.g., at page 9. The Examiner took the position that this feature is taught by He.

For a reference to be relied upon to meet a claim limitation, it must *clearly* teach the limitation for which it is cited. In this case, while col. 8, lines 25-31 of He discusses “real time” measurement, it is not clear that this means measurement during a data transfer time. For example, further down in the same column, He states that the signal parameter measurer *periodically* takes measurements. Moreover, at col. 3, lines 45-65, He states that the signal parameter values result from a measurement sample “measured over a measuring duration.” Thus, while He mentions system parameters “associated with the actively transmitting mobile stations,” Applicants submit that, when He is taken as a whole, it does not *clearly* teach that this *measurement* is actually made

during the data transfer time. For at least this reason, even when combined, the references do not teach or suggest all of the limitations of claim 17.

For at least this reason, independent claim 17 is believed clearly patentable over the admitted prior art even when combined with He. Independent claims 33 and 72 recite substantially similar features and are believed patentable for substantially the same reasons.

Independent Claims 4, 16, 32, 55 and 71

Independent claims 4, 16, 32, 55 and 71, among other things, calculate an average number of the codes in a data transmission time, and the number of use of the codes is measured during the data transmission time. As discussed above in relation to 17, 33 and 72, applicants have found no teaching or suggestion of this feature in the admitted prior art in view of He. For at least this reason, independent claims 4, 16, 32, 55 and 71 are believed patentable over the admitted prior art even in view of He.

Independent Claims 19, 35 and 74

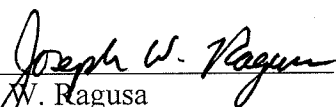
Independent claims 19, 35 and 74 recite calculating an average number of use of the codes in a data transmission time based on measurement of the number of use of the codes during the data transmission time, and calculating an average amount of use of the power in a data transmission time based on measurement of the use of the power during the data transmission time. Claims 19, 35 and 74 were rejected over Miller in view of He, and, as with the abovementioned rejections, He was applied as allegedly teaching measuring the number of use of the codes during the data transmission time. As was discussed above, Applicants submit that He does not clearly teach the feature for which it is relied upon. For at least this reason, the cited art does not teach or suggest the recited limitations.

The dependent claims are believed patentable for at least the same reasons as their respective base claims.

In view of the above amendments and remarks, applicants believe the pending application is in condition for allowance.

Dated: September 25, 2009

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